

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BACKPAGE.COM, LLC,

Plaintiff,

and

THE INTERNET ARCHIVE,

Plaintiff-Intervenor,

v.

ROB MCKENNA, Attorney General of the
State of Washington, *et al.*

Defendants, in their
official capacities.

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No. 2:12-cv-000954-RSM

**STIPULATION AND
[PROPOSED] ORDER FOR
ENTRY OF FINAL
JUDGMENT ENJOINING
ENFORCEMENT OF RCW
4.68A.104 (WASHINGTON
SENATE BILL 6251)**

STIPULATION

The undersigned parties, by and through their counsel of record, hereby stipulate
and agree that:

1. The Court will enter final judgment in this matter, permanently enjoining any
enforcement or prosecution of any person under RCW 4.68A.104 (the codified version of
Washington Engrossed Substitute Senate Bill 6251, Chapter 138, Washington Laws of
2012), declaring that the statute is unconstitutional and violates federal law, and awarding
costs and attorneys' fees to Plaintiffs, as set forth in paragraph 2, below.

2. Plaintiffs are entitled to receive an award of costs and attorneys' fees pursuant to 42 U.S.C. § 1988 in the amount of \$200,000, to be paid by the Office of the Attorney General acting in its official capacity on behalf of the State of Washington within thirty (30) days of entry of final judgment by the Court.

3. With this Stipulation, the undersigned parties hereby settle all claims and potential claims related to this litigation, and no party will appeal or otherwise challenge an order of the Court as set forth below or entry of final judgment in this matter.

4. After entry of final judgment in this matter, the Washington Attorney General's Office will work with the Washington State Legislature to repeal the current unconstitutional version of RCW 4.68A.104 from the Laws of the State of Washington.

ORDER

Based on the foregoing Stipulation and the Court's prior orders, findings and conclusions in this action, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Plaintiffs have standing to pursue the claims in this action pursuant to 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

2. The Court declares that RCW 4.68A.104 (the codified version of Washington Engrossed Substitute Senate Bill 6251, Chapter 138, Washington Laws of 2012):

a. Violates and is preempted by section 230 of the Communications Decency Act, 47 U.S.C. § 230;

b. Violates the First and Fourteenth Amendments to the United States Constitution because it lacks an appropriate element of scienter to avoid chilling protected speech;

c. Violates the First and Fourteenth Amendments because the law is unconstitutionally vague;

d. Violates the First and Fourteenth Amendments because the law is overbroad and not narrowly tailored to the State's asserted governmental interests; and

1 e. Violates the dormant Commerce Clause, U.S. Const., Art. 1, § 8.

2 3. Because RCW 4.68A.104 will result in the loss or derogation of First
3 Amendment and other constitutional and federal statutory rights; irreparable harm would
4 result to online service providers and to the public generally if the statute were allowed to
5 take effect; the balance of equities favors granting permanent injunctive relief; and an
6 injunction is in the public interest; the Court therefore enters a PERMANENT
7 INJUNCTION as follows:

8 a. Defendants and all other persons are permanently enjoined from
9 enforcement of RCW 4.68A.104 in any way, including but not limited to taking any
10 actions to enforce the statute or pursuing prosecution of any person under the statute
11 in any way;

12 b. This permanent injunction shall take effect as of the date of this
13 Order; and

14 c. The Clerk of Court is directed to enter a final judgment in accordance
15 with this Order, terminating this action.

16 4. The Court awards Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C.
17 § 1988 in the amount of \$200,000 and finds that this award is just and reasonable. This
18 award shall constitute a judgment against the Office of the Attorney General acting in its
19 official capacity on behalf of the State of Washington and shall resolve all claims for
20 attorneys' fees and costs against the undersigned Defendants. The undersigned parties
21 respectively shall bear any other costs and fees incurred in connection with this action.

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23 SO ORDERED this _____ day of December, 2012.

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26 _____
RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE
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1 Presented and agreed to by:

2 DAVIS WRIGHT TREMAINE LLP

3 s/ James C. Grant

4 James C. Grant, WSBA No. 14358

5 Ambika K. Doran, WSBA No. 38237

6 s/ Elizabeth L. McDougall

7 Elizabeth L. McDougall, WSBA No. 27026

8 General Counsel, Village Voice Media Holdings, LLC

9 Attorneys for Plaintiff Backpage.com, LLC

10 ELECTRONIC FRONTIER FOUNDATION

11 s/ Matthew Zimmerman

12 Matthew Zimmerman (admitted *pro hac vice*)

13 FOCAL PLLC

14 s/ Venkat Balasubramani

15 Venkat Balasubramani, WSBA No. 28269

16 Attorneys for Plaintiff-Intervenor The Internet Archive

17 ROBERT M. MCKENNA, Attorney General of the State of Washington

18 s/ Lana Weinmann

19 Lana Weinmann, WSBA No. 21393

20 Senior Assistant Attorney General

21 Attorney for Attorney General Robert M. McKenna

22 DANIEL T. SATTERBERG, King County Prosecuting Attorney

23 s/ David Eldred

24 David Eldred, WSBA No. 26125

25 Senior Deputy Prosecuting Attorneys

26 Attorneys for Defendant Prosecuting Attorneys